



California Fair Political Practices Commission

December 31, 1985

Denis A. Eymil
County Counsel
Kings County
Government Center
Hanford, CA 93230

Re: Your Request for Advice,
Our File No. A-85-268

Dear Mr. Eymil:

This is in response to your letter, dated December 23, 1985, requesting written advice on behalf of Mr. Dominic Faruzzi, a member of the Kings County Board of Supervisors. You have stated the facts as follows:

FACTS

Mr. Faruzzi and his wife own 100% of the outstanding shares of Mid-State Welding Supply Co., Inc. ("Mid-State"), a closely held corporation doing business in Kings, Tulare, Kern and Fresno Counties. The corporation is not qualified for public sale. Mr. Faruzzi is semi-retired and no longer participates in managing the business; however, Mr. Faruzzi draws approximately \$1,800 per month salary from the business and his wife draws approximately \$1,000 per month in salary.

Chemical Waste Management, Inc. ("Chem Waste") owns and operates a toxic and hazardous waste disposal facility in western Kings County. As part of that operation, Chem Waste purchased approximately \$30,000 of air tank recharging services in the last year and uses air tanks supplied by Mid-State. A Mid-State truck runs a weekly route, which includes Chem Waste, to supply their needs. Chem Waste also telephones in orders to Mid-State. This business relationship has existed for 3-1/2 years.

On January 14, 1986, the Kings County Board of Supervisors will begin a public hearing on an appeal by Chem Waste

requesting the issuance of a conditional use permit. The application for this permit seeks to quadruple the dumping area of the facility. Chem Waste has indicated in prior public hearings before the Kings County Planning Commission that it will be handling twice as much material within two to three years. Representatives of Chem Waste have also indicated that, if the expansion is not granted, the facility may close as early as Fall 1986 or as late as three years from now.

QUESTION

Mr. Faruzzi wishes to know whether he must disqualify himself from making, participating in, or influencing the decision concerning Chem Waste's appeal?

CONCLUSION

Mr. Faruzzi may not make, participate in making or in any way attempt to use his official position to influence any decision concerning the appeal by Chem Waste.

ANALYSIS

The Political Reform Act ("the Act")^{1/} prohibits public officials from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. Section 87100.

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

Because Mr. Faruzzi has an investment interest in Mid-State (Section 87103(a)), receives income from the corporation (Section 87103(c)) and presumably is a director or officer (Section 87103(d)), Mr. Faruzzi clearly has an economic interest in that corporation.^{2/}

As such, Mr. Faruzzi must disqualify himself from participating in any governmental decision that could have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on Mid-State.

The decision by the Board of Supervisors to grant or deny Chem Waste's appeal concerning the conditional use permit for its waste facility could directly effect the amount of business that Chem Waste does with Mid-State. Granting the appeal and approving the conditional use permit will allow Chem Waste to expand its facility four-fold and increase the amount of material it can handle. Such an increase could result in an increase in the amount of business that Chem Waste does with

^{2/} Mr. Faruzzi would have an economic interest in Mid-State based on any one of the criteria listed in Section 87103.

Mid-State. Conversely, denial of Chem Waste's appeal could result in the closure of Chem Waste's facility and eliminate the need for Mid-State's goods and services. Clearly, the Board's decision on Chem Waste's appeal will have a reasonably foreseeable financial effect on Mid-State.

Next it must be determined whether the foreseeable financial effect on Mid-State would be material.

The criteria for determining whether a financial effect on a business entity would be material is set out in 2 Cal. Adm. Code Section 18702.2. Under subsection (g) of this regulation, the effect of a decision on a corporation, which is not qualified for public sale and has less than \$18,000,000 in net tangible assets, will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

2 Cal. Adm. Code Section 18702.2(g)

As you indicated, a denial of Chem Waste's conditional use permit could result in the closure of its facility as early as Fall 1986 or as late as the end of 1988. If the worst case scenario were to occur, Mid-State could experience a decrease in gross revenues of approximately \$30,000 in one fiscal year. Even under the best case scenario, Mid-State could stand to lose at least \$10,000 in gross revenues in one fiscal year during Chem Waste's phase-out of its facility. Consequently, it is reasonably foreseeable that the financial effect of the Board's decision would be material with respect to Mr. Faruzzi's economic interests.

Not only would Mr. Faruzzi be required to disqualify himself from participating in this decision under the

traditional analysis for conflict of interest, disqualification would also be required pursuant to the Commission's regulation 2 Cal. Adm. Code Section 18702.1.

Under 2 Cal. Adm. Code Section 18702.1, a public official must disqualify himself if:

(a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if:

(1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months appears before the official in connection with the decision;

(2) Any business entity in which the official has a direct or indirect investment of \$1,000 or more, or in which the official is an officer, director, partner, trustee, employee, or holds any position of management, appears before the official in connection with the decision;

(3) The decision concerns the zoning or rezoning, annexation or deannexation, sale, purchase or lease, actual or permitted use, or inclusion in or exclusion from any city, county, district or other local government subdivision of, or taxes or fees assessed or imposed on, or any similar decision as to real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more;

(4) It is reasonably foreseeable that the personal expenses, income, assets, or liabilities of the official or his or her immediate family will be increased or decreased by at least \$250 by the decision; or

(5) Disqualification is required pursuant to any other section in this chapter.

Denis A. Eymil
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A business entity "appears before" an official when it:

(b) A person or business entity appears before an official in connection with a decision when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;

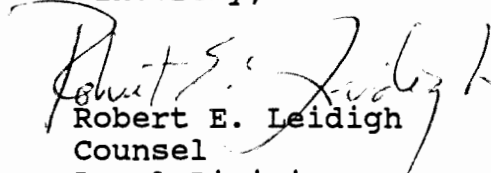
(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

2 Cal. Adm. Code Section 18702.1(b)

Because Mr. Faruzzi and his wife own 100% of the outstanding shares of Mid-State, any source of income to Mid-State of \$250 or more is also a source of income to Mr. & Mrs. Faruzzi. (Section 82030(a).) Chem Waste would be "appearing before" Mr. Faruzzi because it is named party and has initiated the proceeding. Accordingly, under 2 Cal. Adm. Code Section 18702.1 Mr. Faruzzi would be required to disqualify himself from participating in the decision concerning Chem Waste's appeal.

Should Mr. Faruzzi require any additional advice regarding this, or any other, situation, please do not hesitate to contact the Commission again.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:JG:nwm
cc: Dominic Faruzzi

DENIS A. EYMIL
COUNTY COUNSEL

OFFICE OF
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KINGS COUNTY
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JAMES T. LAPORTE
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December 23, 1985

General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Attn: Robert Leidigh

Dear Mr. Leidigh:

Pursuant to our telephone conversation of December 20, 1985, we are enclosing an opinion request in this letter.

Mr. Dominic Faruzzi, a member of the Kings County Board of Supervisors, has authorized us to send this information to you and to request written advice under Government Code Section 83114(b). Mr. Faruzzi's home mailing address is 10900 Furlong Drive, Hanford, California 93230, and his business mailing address is 500 East 6th Street, Hanford, California 93230. If you have any questions of him, you may reach him by telephone at (209) 584-3081.

Mid-State Welding Supply Co., Inc. is a closely held corporation doing business in Kings, Tulare, Kern and Fresno Counties. Mr. Faruzzi and his wife own 100% of the outstanding shares. Mr. Faruzzi draws approximately \$1800.00 per month salary from the business and his wife draws approximately \$1000.00 in salary. The corporation is not qualified for public sale. Mr. Faruzzi is semi-retired and no longer participates in managing the business.

Chemical Waste Management, Inc. owns and operates a toxic and hazardous waste disposal facility in western Kings County. As part of that operation, Chem Waste purchased approximately \$30,000.00 of air tank recharging services in the last year and uses air tanks supplied by Mid-State. A Mid-State truck runs a weekly route, which includes Chem Waste, to supply their needs. Chem Waste also telephones in orders to Mid-State. This business relationship has existed for 3-1/2 years.

General Counsel
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In light of these facts, is Mr. Faruzzi disqualified from making, participating in, and influencing the decision on the appeal?

Your immediate attention to this matter is greatly appreciated.

Very truly yours,

A handwritten signature in dark ink, appearing to read "DENIS A. EYMIL", written over the typed name.

DENIS A. EYMIL
County Counsel

LMS/gd

cc: Dominic Faruzzi

DENIS A. EYMIL
COUNTY COUNSEL

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JAMES T. LAPORTE
ASSISTANT
LAWRENCE M. SCHOENKE
DEPUTY

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General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Attn: John McLean or Robert Leidigh

Re: Request for Written Opinion;
Supervisor Dom Faruzzi, Kings County


Dear Mr. McLean:

Larry Schoenke from our office discussed with Bob Leidigh about obtaining a written opinion on possible conflict of interest for one of our Supervisors as stated in the enclosed letter. (Larry has taken a week off for Christmas.) I understand the matter is assigned to you during Mr. Leidigh's absence.

We hope to obtain your opinion the first week of January because the issue before the Board of Supervisors will be discussed on January 14th. We recognize this is very short notice for you, but Mr. Schoenke and Mr. Leidigh agreed that the issue, given the facts, is clear cut and hopefully for that reason your letter opinion will be very routine. If we can expedite the matter in any way, please give us a call.

We very much appreciate your outstanding service to us on this matter.

Very truly yours,


DENIS A. EYMIL
County Counsel

DAE/gd
Enclosure